

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 30TH SEPTEMBER 2009 / 8TH ASWINA 1931

WP(C).No. 21209 of 2009(U)

PETITIONERS:

- 1. SATHY.G**
W/O.KRISHNAN KUTTY, PALAVILA DIZHAKKATHIL,
KIDANGAYAM NADUVIL, PATHARAM, SOORANAD SOUTH VILLAGE,
KOLLAM DISTRICT.
- 2. KRISHNAN KUTTY.B.**
PALAVILA DIZHAKKATHIL, KIDANGAYAM NADUVIL,
PATHARAM, SOORANAD SOUTH VILLAGE,
KOLLAM DISTRICT.
- 3. B.PREMKUMAR,**
JUNIOR CLERK,
PATHARAM PO, SOORANAD SOUTH VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.P.V.DILEEP

RESPONDENTS:

- 1. THE AUTHORISED OFFICER,**
DEWAN HOUSING FINANCE CORPORATION LTD,
PARAMESWARA TOWER, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 023.
- 2. THE MANAGER,**
DEWAN HOUSING FINANCE CORPORATION LTD,
PARAMESWARA TOWER, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 023.

R1 BY ADV. SRI.P.PAULCHAN ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/09/2009,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- P1. COPY OF THE NOTICE ISSUED BY THE RESPONDENTS U/S. 13 (2) OF THE SECURITIZATIN AND RECONSTRUCTON OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT.**
- P2. COPY OF THE RECIEPT EVIDENCING THE PAYMENT OF THE AMOUNT BY THE PETITIONER.**
- P3. COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER UNDER THE PROVISION OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT.**

RESPONDENTS' EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE

shg/

C.K. ABDUL REHIM, J

W.P.(C)No. 21209 of 2009

Dated this the 30th day of September, 2009

J U D G M E N T

1. The petitioners have approached this court aggrieved by the proceedings initiated by the 1st respondent under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short the SARFAESI Act). The petitioners availed a loan to the tune of Rs.1,65,000/- from the 2nd respondent during the year 2004. As per terms of the loan agreement, the amount ought to have been repaid in equal monthly installments of Rs.2,281/- each. After payment of some of the installments, the petitioners defaulted payments and consequently the Bank had initiated proceedings against the secured assets under the SARFAESI Act. Respondents have approached the Chief Judicial Magistrate, Kollam, under Section 14 (1) of the Act and an Advocate Commissioner was already appointed to take over actual possession of the immovable property.

According to the petitioners the action initiated by the Bank is without considering their request for permitting regularisation of the account by paying the defaulted monthly installments. Learned counsel for the petitioners submitted that the petitioners are ready and willing to clear payment of the defaulted installments, along with over due interest if any liable, within a reasonable time. Hence the petitioner is seeking direction for permitting regularization of the loan account and for continuing payment of the balance amounts as per the original schedule of repayment.

2. Heard, learned standing counsel appearing for the respondents, who on the basis of instructions submitted that, the amount outstanding pertaining to the defaulted installments is Rs.13,248/-. It is submitted that since the loan amount is in chronic default, the Bank is not favouring regularisation.

3. Having considered the rival contentions and facts and circumstances of the case, the Writ Petition is disposed of directing the petitioners to make payment of the amount

pertaining to the defaulted installments along with over due interest if any liable, and expenses or charges if any incurred by the Bank with respect to the proceedings initiated, on or before 15.10.2009. The respondents are directed to keep in abeyance all further steps under the SARFAESI Act till such date. On payment of the amount as directed above and on payment of the future installments as per the original schedule of repayment, without default, the respondent shall keep in abeyance further proceedings under the SARFAESI Act.

4. It is made clear that if the petitioner is make default in any future installment, the Bank is free to take further step pursuant to the notice already issued and the petitioners are precluded from taking any further challenge against such proceeding, before this Court or before any other forum.

**C.K. ABDUL REHIM
JUDGE**

shg/